

No. 22067

**NEW ZEALAND
and
SAMOA**

**Agreement for air services between and beyond their
respective territories (with schedule). Signed at Apia on
23 June 1978**

Authentic text: English.

Registered by New Zealand on 26 July 1983.

**NOUVELLE-ZÉLANDE
et
SAMOA**

**Accord relatif aux services aériens entre leurs territoires
respectifs et au-delà (avec annexe). Signé à Apia le
23 juin 1978**

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 26 juillet 1983.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF WESTERN SAMOA FOR AIR SERVICES BETWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of New Zealand and the Government of the Independent State of Western Samoa (hereinafter referred to as "the Contracting Parties"),

Being parties to an Agreement concerning Civil Aviation signed on behalf of the Government of New Zealand and the Government of the Independent State of Western Samoa respectively at Apia on the nineteenth day of April, 1973,

Desiring to conclude an Agreement, supplementary to the said Civil Aviation Agreement, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 1. DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) The term "Civil Aviation Agreement" means the Agreement concerning Civil Aviation signed on behalf of the Government of New Zealand and the Government of the Independent State of Western Samoa respectively at Apia on the nineteenth day of April 1973;

(b) The term "the Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on the seventh day of December, 1944,² and includes any Annex adopted under Article 90 of that Convention and any amendment of the Annexes or Convention under Articles 90 and 94 thereof so far as those Annexes and amendments have become effective for or been ratified by both Contracting Parties;

(c) The term "aeronautical authorities" means, in the case of each of the Contracting Parties, the Minister for the time being responsible for civil aviation and any person or body authorised to perform any functions at present exercisable by him or similar functions;

(d) The term "designated airline" means an airline which has been designated and authorised in accordance with Article 4 of this Agreement;

(e) The term "territory" in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty of that State and in the case of New Zealand also includes the Cook Islands and Tokelau;

(f) The terms "air service", "international air service", "airline" and "stop for non-traffic purposes" have the meanings respectively assigned to them in Article 96 of the Convention.

¹ Came into force on 23 June 1978 by signature, in accordance with article 17.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117, vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

2. The Schedule to this Agreement (hereinafter called "the Schedule") forms an integral part of this Agreement and all references to this Agreement shall be deemed to include references to the Schedule.

Article 2. CHICAGO CONVENTION AND OTHER CONVENTIONS

The provisions of this Agreement shall be subject to the provisions of the Convention and to the provisions of any other multilateral convention that is binding on both Contracting Parties in so far as those provisions are applicable to international air services.

Article 3. GRANT OF RIGHTS

1. Each Contracting Party grants to the other Contracting Party the following rights in respect of its scheduled international air services:

- (a) The right to fly across its territory without landing,
- (b) The right to make stops in its territory for non-traffic purposes.

2. Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement for the purpose of establishing scheduled international air services on the routes specified in the appropriate Section of the Schedule annexed to this Agreement. Such services and routes are hereinafter called "the agreed services" and "the specified routes" respectively. While operating an agreed service on a specified route the airline designated by each Contracting Party shall enjoy in addition to the rights specified in paragraph (1) of this Article the right to make stops in the territory of the other Contracting Party at the points specified for that route in the Schedule to this Agreement for the purpose of taking on board and discharging passengers and cargo including mail, separately or in combination.

3. Nothing in paragraph (2) of this Article shall be deemed to confer on the airline of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward to be set down at another point in the territory of the other Contracting Party.

Article 4. DESIGNATION OF AIRLINES

1. Each Contracting Party shall have the right to designate in writing through the diplomatic channel to the other Contracting Party an airline for the purpose of operating the agreed services on the specified routes.

2. Each Contracting Party shall have the right, on notification in writing to the other Contracting Party, to withdraw its designation of an airline and to designate another airline in its place.

3. On receipt of such designation the other Contracting Party shall, subject to the provisions of paragraphs (4) and (5) of this Article, without delay grant to the airline designated the appropriate operating authorisation.

4. The aeronautical authorities of one Contracting Party may require an airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention.

5. Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (3) of this Article, or to impose such conditions as it may deem necessary on the exercise by a designated airline of the rights specified in Article 3 of this Agreement, in any case where the said Contracting Party is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in its nationals.

6. When an airline has been so designated and authorised it may at any time operate the agreed services, provided that a tariff established in accordance with the provisions of Article 11 of this Agreement is in force in respect of that service.

Article 5. REVOCATION OR SUSPENSION OF OPERATING AUTHORISATIONS

1. Each Contracting Party shall have the right to revoke an operating authorisation or to suspend the exercise of the rights specified in Article 3 of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) In any case where it is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party; or
- (b) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- (c) In a case where the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

2. Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this Article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

Article 6. CUSTOMS REGULATIONS

1. Aircraft of the designated airline of one Contracting Party operating international air services, and the supplies of regular equipment, fuel, lubricating oils, and aircraft stores (including provisions of food, drink and tobacco) on board such aircraft, shall be exempted on arrival in the territory of the other Contracting Party from all customs duty, inspection fees, and other similar duties and charges, provided that such supplies either:

- (a) Remain on board the aircraft concerned until departure from the territory of the latter Contracting Party or are used on the part of the journey performed over that territory; or
- (b) Are unloaded from the aircraft with the permission of the appropriate customs authorities, pursuant to the provisions of paragraph (3) of this Article.

2. The same exemption from duties and charges, save in respect of reasonable charges made for services rendered, shall apply to:

- (a) Aircraft stores, of whatever origin, obtained in the territory of one Contracting Party within the limits permitted by relevant laws and regulations of that Contracting Party, and taken on board aircraft of the other Contracting Party operating an international air service;

- (b) Spare parts imported into the territory of one Contracting Party for the maintenance or repair of aircraft of the other Contracting Party operating an international air service;
- (c) Fuel and lubricating oils obtained in the territory of one Contracting Party and intended for fuelling aircraft of the other Contracting Party operating an international air service, even though such supplies are to be used on that part of the flight which passes over the territory of the Contracting Party in whose territory they were taken on board;
- (d) At the discretion of the customs authorities, equipment (including specialised ground equipment), intended for incorporation in or use on aircraft of a designated airline of the other Contracting Party engaged on an international air service, or for use solely in connection with the operation or servicing of such aircraft.

3. Supplies of regular equipment and aircraft stores referred to in paragraph (1) of this Article may not be unloaded except with the permission of the customs authorities of the Contracting Party concerned. If this permission has been granted, the supplies shall be stored in accordance with the directions of the customs authorities pending re-exportation or compliance with normal customs procedures.

Article 7. TRANSFER OF EARNINGS

Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of its receipts in its territory over its expenditure therein. Such transfers shall be effected on the basis of the prevailing foreign exchange market rates for current payments.

Article 8. PRINCIPLES GOVERNMENT OPERATION OF AGREED SERVICES

1. There shall be fair and equal opportunity for the designated airline of each Contracting Party to operate the agreed services on the specified routes between their respective territories.

2. In operating services on any specified route the designated airline of each Contracting Party shall take into account the interests of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same route.

3. The agreed services provided by the designated airline of each Contracting Party shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline. Provision for the carriage of passengers and cargo including mail originating from and destined for points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to:

- (a) Traffic requirements to and from the territory of the Contracting Party which has designated the airline;

- (b) Traffic requirements of the area through which the agreed service passes, after taking account of local and regional services;
- (c) The requirements of through airline operation.

Article 9. CHANGE OF GAUGE

In operating any agreed service on any specified route a designated airline of one Contracting Party may substitute one aircraft for another at a point in the territory of the other Contracting Party on the following conditions only:

- (a) That it is justified by reason of economy of operation;
- (b) That the aircraft used on the section of the route more distant from the terminal in the territory of the first Contracting Party is not larger in capacity than that used on the nearer section;
- (c) That the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;
- (d) That there is an adequate volume of through traffic;
- (e) That the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at a point where the change of aircraft is made;
- (f) That the provisions of Article 8 of this Agreement shall govern all arrangements made with regard to change of aircraft;
- (g) That in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory.

Article 10. CHARTER OR LEASE

In operating any agreed service on any specified route the designated airline of each Contracting Party shall not without the prior approval of the other Contracting Party lease, charter, hire or otherwise use or operate any aircraft not owned by it or owned by the designated airlines of the Contracting Parties.

Article 11. TARIFFS

1. For the purposes of the following paragraphs the term "tariff" means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services excluding remuneration and conditions for the carriage of mail; the term "IATA" means the International Air Transport Association; the term "designated airline concerned" means a designated airline currently operating, or proposing to operate, on the routes covered by a tariff.

2. The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of the service (such as standards of speed and accommodation) and the tariffs of other airlines.

3. Such tariffs shall be submitted for the approval of the aeronautical authorities of both Contracting Parties at least sixty (60) days before the proposed date of their introduction. In special cases this period may be reduced, subject to the agreement of the said authorities. This approval may be given expressly. If neither of the aeronautical authorities has expressed disapproval within thirty (30) days from the date of submission of a tariff in accordance with this paragraph, the tariff shall be considered as approved. In the event of the period for submission being reduced, as provided for in this paragraph, the aeronautical authorities may agree that the period within which any disapproval may be notified shall be less than thirty (30) days.

4. The tariffs referred to in paragraph (2) of this Article shall, whenever possible, be agreed by the designated airline or airlines concerned through the rate-fixing machinery of IATA. When this is not possible, tariffs in respect of the specified route in question shall be agreed upon by the designated airline or airlines concerned. In all cases the agreed tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties who shall have due regard to the provisions of paragraph (2) of this Article.

5. If the designated airline or airlines concerned cannot agree on the appropriate tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them in accordance with the provisions of paragraph (3) of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to determine the tariffs according to the provision of paragraph (2) of this Article by agreement between themselves.

6. If the aeronautical authorities of the Contracting Parties cannot agree on the determination of any tariff under paragraph (5) of this Article, the dispute shall be settled in accordance with the provisions of Article 13 of this Agreement.

7. No new or amended tariff shall come into effect unless and until it is approved by the aeronautical authorities of both Contracting Parties or is settled in accordance with the provisions of Article 13 of this Agreement.

8. When tariffs have been established in accordance with the provisions of this Article, these tariffs shall remain in force until new tariffs have been established in accordance with the provisions of this Article. Nevertheless, a tariff shall not be prolonged by virtue of this paragraph for more than twelve (12) months after the date on which one Contracting Party shall have given notice in writing to the other Contracting Party of its intention to withdraw its approval.

9. Unless otherwise agreed between the parties each Contracting Party undertakes to use its best efforts to ensure that any tariff specified in terms of its national currency will be established in an amount which reflects the effective exchange rate (including all exchange fees or other charges) at which the designated airline of each Contracting Party can convert and remit the revenues from their transport operations into the national currency of the other Contracting Party.

Article 12. PROVISION OF STATISTICS

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by a

designated airline of the Contracting Party referred to first in this Article. Such statements shall include all information required to determine the amount of traffic carried by the airline on the agreed services and the origins and destinations of such traffic.

Article 13. CONSULTATION

1. In a spirit of close cooperation, the aeronautical authorities of the Contracting Parties shall consult each other from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and shall consult when necessary to provide for modification thereof.

2. Either Contracting Party may request consultations, which may be either oral or in writing and shall begin within a period of sixty (60) days of the date of receipt of the request, unless both Contracting Parties agree to an extension of this period.

Article 14. SETTLEMENT OF DISPUTES

1. If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

2. If the Contracting Parties fail to reach a settlement by negotiation, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty (60) days from the date of receipt by either Contracting Party from the other of a notice through diplomatic channels requesting arbitration of the dispute by such a tribunal, and the third arbitrator shall be appointed within a further period of sixty (60) days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified, or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organisation may at the request of either Contracting Party appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

3. The Contracting Parties shall comply with any decision given under paragraph (2) of this Article.

4. The expenses of the national arbitrators shall be borne by the respective Contracting Parties. All other expenses of the arbitral tribunal, including the fees and expenses of the third arbitrator, shall be shared equally by the Contracting Parties.

Article 15. AMENDMENT

If either of the Contracting Parties considers it desirable to modify any provision of this Agreement including the annexed Schedule, such modification, if agreed between the Contracting Parties and if necessary after consultation in accordance with Article 13 of this Agreement, shall come into effect when confirmed by an Exchange of Notes, through the diplomatic channel.

Article 16. TERMINATION

Either Contracting Party may at any time give notice to the other Contracting Party of its decision to terminate this Agreement; such notice shall be simultaneously communicated to the International Civil Aviation Organisation. In such case the Agreement shall terminate twelve (12) months after the date of receipt of the notice by the other Contracting Party, unless the notice to terminate is withdrawn by agreement before the expiry of this period. In the absence of acknowledgement of receipt by the other Contracting Party, notice shall be deemed to have been received fourteen (14) days after the receipt of the notice by the International Civil Aviation Organisation.

Article 17. ENTRY INTO FORCE

This Agreement shall enter into force on the date of the signature.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Agreement.

DONE in duplicate at [Apia] this 23rd day of June 1978 in the English language.

For the Government
of New Zealand:

[Signed — Signé]¹

For the Government
of the Independent State
of Western Samoa:

[Signed — Signé]²

SCHEDULE

SECTION 1

*Routes to be operated in both directions
by the designated airline of New Zealand*

<i>Points of origin</i>	<i>Intermediate points</i>	<i>Points in Western Samoa</i>	<i>Points beyond</i>
1. Points in New Zealand	Tonga Niue	Any one point in Western Samoa	Points in United States of America excluding American Samoa
2. Points in the Cook Islands	Tonga Niue	Any one point in Western Samoa	—

¹ Signed by Collin McLachlan — Signé par Collin McLachlan.

² Signed by Asi Eikeni — Signé par Asi Eikeni.

SECTION 2

*Routes to be operated in both directions
by the designated airline of Western Samoa*

<i>Points of origin</i>	<i>Intermediate points</i>	<i>Points in New Zealand territory</i>
1. Points in Western Samoa	Niue Tonga	Auckland
2. Points in Western Samoa	Niue Tonga	Rarotonga

NOTE

Points on the routes set out in Section 1 and Section 2 of this Schedule may be omitted on any or all flights provided that each service begins or ends in the territory of the Contracting Party which has designated the airline in question.